

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

UNITED STATES OF AMERICA

PLAINTIFF/RESPONDENT

v.

Civil No. 05-5205
Criminal No. 01-50010

FREDERICK O. BOGAR

DEFENDANT/MOVANT

O R D E R

Now on this 13th day of April, 2006, the above referenced matter comes on for consideration. The Court, being well and sufficiently advised, finds and orders as follows:

1. Frederick O. Bogar, the defendant/movant, filed herein his **Motion to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody Under Title 28 U.S.C. § 2255** (document #30), on December 27, 2005.

2. The United States filed a response, arguing that Bogar's motion is untimely (document #32).

3. Following Bogar's completion of a questionnaire concerning his § 2255 motion, United States Magistrate Judge Beverly Stites Jones entered her Report and Recommendation (document #37) which concluded that Bogar's motion should be dismissed as untimely, as Bogar failed to file his motion within one year of the date his conviction became final. Judge Jones also found that **Blakely** and **Booker** are not retroactively applicable (See Never Misses a Shot v. United States, 413 F.3d

781 (8th Cir. 2005)); and, that the application of the doctrine of equitable tolling is not, in this case, appropriate.

4. Bogar filed **Plaintiff's Answer to Magistrate Judge's Report and Recommendation** (document #38) on March 13, 2006. In his pleading, Bogar attempts to argue the merits of his §2255 motion – despite the fact that the issue currently at bar is whether that motion is timely. Bogar also argues that the doctrine of equitable tolling should be applied to his motion.

7. This Court has reviewed the pleadings filed herein and concludes that the Report and Recommendation is sound as to both fact and law and that it should be approved and adopted *in toto*.

IT IS, THEREFORE, ORDERED that movant's objections to the Report and Recommendation should be, and they hereby are, **overruled**.

IT IS FURTHER ORDERED that the **Magistrate Judge's Report and Recommendation** (document #37) should be, and it hereby is, **adopted in toto**.

IT IS FURTHER ORDERED that, for the reasons stated herein, movant's motion under 28 U.S.C. § 2255 to vacate, set aside, or correct sentence, is hereby **denied**.

/s/Jimm Larry Hendren
HON. JIMM LARRY HENDREN
UNITED STATES DISTRICT JUDGE